







her honor, by such an organization of all her financial departments as shall leave no room for errors, from penurious employment of agents, nor inadequate legislation to regulate their duties.

In finally bringing this report to its close, the committee cannot do so without expressing their hearty commendation to the Commissioner of Loans and his clerk, from whom, in their long and arduous examination, they have received the most polite attention, and every facility requisite to the performance of their duties.

All of which is respectfully submitted.

FRANCIS J. HOOVER,  
CLINTON COOK,

On the part of the House.

FRANCIS P. PHELPS,

On the part of the Senate.

Baltimore, December 11th. 1846.

[Document D.]

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BY THE HOUSE OF DELEGATES,

January 15th, 1847.

Read and ordered to be printed.

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## COMMUNICATION

FROM THE

President of the Baltimore and Ohio Rail Road Company,

TO

THOMAS DONALDSON, ESQ.,

CHAIRMAN OF THE COMMITTEE ON WAYS AND MEANS

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*Extract from the minutes of the Board, at their stated Meeting,  
January 13th, 1847.*

"The President presented to the Board the Annual Message of the Governor and the Annual Report of the Treasurer.

"He also acquainted the Board that a resolution had been proposed in the House of Delegates, by the Chairman of the Committee of Ways and Means, authorising the Treasurer to accept the State's share of the recent dividend by this Company, and that it was understood the resolution had been made the order for Monday, the 18th instant.

"It being obvious that the true character of the dividend, nor the considerations by which the Board had been actuated in declaring it, had been correctly apprehended; and, as there appeared to be a general wish that their motives and conduct should be satisfactorily explained to the Legislature, he submitted to the Board whether they would desire to authorise any proceeding for that purpose.

"He had prepared a letter to Thomas Donaldson, Esq., Chairman of the Committee of Ways and Means of the House of Delegates, embodying an explanation of the character and mode of paying the dividend; and which, if it met the entire approbation of the Board, he would be willing to forward to that gentleman under their authority.

"The letter being read, on motion of Mr. O'Donnell, seconded by Mr. Murdoch, it was unanimously approved and adopted; and the President was authorised to transmit it to the Chairman of the Committee of Ways and Means of the House of Delegates."

I certify the foregoing to be a true copy.

J. J. ATKINSON, Secretary.

## COMMUNICATION.

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OFFICE OF THE BALTIMORE & OHIO RAIL ROAD CO.,

January 13th, 1847.

TO THOMAS DONALDSON, ESQ., *Chairman of the Committee of  
Ways and Means, House of Delegates, Annapolis.*

SIR :

Perceiving that so much of the Message of the Governor as relates to the recent dividend by this company has been referred by the House of Delegates to the Committee of Ways and Means, I have deemed it no more than my duty, as soon as at their stated meeting to-day, it could receive the sanction of the Board, to invite your attention and that of the committee to some observations illustrative of the real character and principles of the dividend: and of its effect upon the interests of the State as a stockholder.

The *Annual Report* of the President and Directors—a copy of which I have the honor to subjoin.—presents generally, and, it was hoped, satisfactorily, the grounds and inducements which influenced the President and Directors in their proceedings; and I will not attempt to disguise the regret which all must feel that they should have been liable to misapprehension in any quarter whatever.

The gravest misconception to which it would appear the mode adopted for its payment has exposed the character of the recent dividend,—because if true, the conduct it supposes, could neither be defended nor palliated, and although wholly unauthorized would nevertheless be both offensive and unjust,—is the unequivocal expression of the opinion by the highest functionary of the State, that the dividend was “*declared of conjectural profits.*” It may be presumed that the honorable body to whom this opinion has been expressed, not less than those whose probity, if it were true, would be implicated, would be gratified at an opportunity of shewing it to be altogether unmerited. And as the company has been presented to the Honorable Legislature, by the same functionary, as possessing on other grounds “the strongest claims to their favorable consideration, and to all the assistance which without detriment to the public revenue they can render it in the pre-

secution of its designs," it may be supposed that a refutation of that, which, if left without contradiction, might deprive them of both, would not be less satisfactory.

It, therefore, becomes no less a duty than a right, to state and, by the undeniable facts of the case to prove, I hope to the satisfaction of all who may take the trouble to examine the subject, that the recent dividend of this company was not in any sense, and according to any just interpretation "declared of conjectural profits;" and that not one of those who recommended that dividend, and the mode of its payment, could be capable of meriting the approbrium which the character that has been attributed to their act would deserve.

The annual report, affecting neither concealment nor mystery, but fully and plainly setting forth all the features of the proceeding, with the general inducements that led to its adoption,—and which, it might not unreasonably have been expected, would ensure the approbation of the whole, as it in fact did that of 13/16ths of the stockholders:—the annual report, free from all doubt and not susceptible of the slightest impeachment, conclusively shows that the profits of the company, actually earned and received during the year, exceeded twice the amount of that of which the dividend was declared; and the explanations accompanying the report shew with equal conclusiveness, that until these profits should be paid to the stockholders in some mode acceptable to themselves, they would unnecessarily be deprived of the entire earnings of the year.

I may assure you, sir, that if the Directors could have anticipated any objection to the mode by which they proposed to pay the profits they had earned to their stockholders, the possibility that profits shewn to have been actually earned could be denominated "conjectural" could not have entered into their minds.

For any purpose than that of a proper connection, it would be unnecessary to observe, that the profits of the company applicable to dividend, and which without some substantial reason, the President and Directors would be bound by the provisions of the charter, annually to distribute to the stockholders,—comprehend the net actual receipts over and above the cost of transportation, including the ordinary repairs of road-way and machinery, and of the other works necessary to the company's operations; and although these may be and, from the necessity of the case, not unfrequently are expended upon other and more permanent objects, they cannot, for that reason, be less regarded as the actual net earnings of the company's operations. In the earlier history of this company, the authority of the Board to apply their net actual revenue beyond the current and ordinary expenses of the year to the purposes of "construction," or of permanent or extraordinary repairs, was seriously questioned; and the opinion that these objects could only be provided for by an addition to the capital, or by loans, found numerous and respectable advocates. It appears, however, to have been finally decided that, according to a just in-



terpretation of the charter, it was optional with the Board to provide for all such objects, by adding to the capital, or by borrowing upon loan, or by a direct application of the annual revenue. It will not escape you, in this connection, that the resource of borrowing differs in nothing, but in amount, and in the mode and time of its application, from a direct use of the revenue: since the latter only ought properly to be looked to for the payment of the interest and the ultimate reimbursement of the principal of the loans; and in point of fact, although with less directness, an addition to the capital cannot be made without a similar effect upon the revenue. In the former case, the application of the revenue is spread over a series of years, and in the latter is subjected to a permanent charge. In the present instance, so far as the interests of the stockholders are concerned, the immediate effect of an addition to the capital would have been less advantageous, as will better appear in the subsequent remarks it will be my duty to make. It must be plain, therefore, that to raise money by loans, for any purpose whatever, is in effect only an application of the annual revenue to such object; and while, for current objects of expenditure, immediately relating to the ordinary operations of the work, and capable of easy provision from the annual receipts, the revenue is commonly used, yet, for greater objects either of *construction*, or of repair of a more permanent character, and requiring too great an expenditure to be met by the annual net receipts, an addition to the capital or loan is the obvious resource—the latter, is in most instances preferred. Accordingly, when interrogated by the House of Delegates, in the month of January, 1844, as to the source whence the Board intended to procure the means to engage in the transportation of coal and iron, it was officially stated, in reply, that they expected to resort to their *credit*, or to their revenue, or to both, as they might deem most advisable when it should become necessary to use either. The Board finally determined, and in the Annual Report announced their determination, to resort to a loan for that purpose; to be raised in the first instance, from their stockholders by the application of a portion of the annual revenue, under a pledge of reimbursement from the proceeds of the coal and iron trade, so long as it might be practicable to keep it distinct from the general transportation. The last annual report shows why it was no longer feasible, to separate the coal trade, which had extended beyond the limit of special contracts, from the general business of the road.

As early as the month of November, 1845, the old parts of the track, originally constructed with the thin plate iron bar, was found to be so dilapidated as to need a thorough renovation of the whole line, from Baltimore to Harpers' Ferry; and, in the opinion of the Chief Engineer, its condition had become so unsound and precarious as, not more for the successful operations of the company, than for the security of the public, to require that the renovation should be accomplished with the least possible delay. Under such circumstances, the Board deemed it their imperious duty to exert

their utmost resources to accomplish the object. It must be obvious to all that for a work of such magnitude, and demanding so much despatch, the annual revenue of the company would be utterly inadequate ; and it must be not less obvious that to such a renovation of the road, strictly resembling, if in fact, it may not be called the work of *construction* ;—to endure, with the aid of current repairs, indefinitely,—it would have been unjust to the present stockholders, if indeed it were not inconsistent with the spirit of the charter, directly and exclusively to apply the annual receipts. The Board did not doubt that such a work was precisely of a character to make it only just and equitable that the application of the revenue should be spread over a series of years ; and they accordingly determined to borrow such amount as might be requisite for the purpose. They accordingly authorised the committee of Finance to raise the requisite amount by loan, upon the bonds of the company, re-imbursable in twenty years, and bearing an interest of six per cent. to be further secured by a mortgage upon the company's property. The authority for this proceeding is conferred by the company's charter, which will be presently recited ; but a doubt being entertained, whether, according to the provisions of the charter, the bonds could be legally disposed of below the par value, a special application was presented to the Legislature to remove that doubt. It is understood, and will not it may be presumed, be denied that, upon that occasion, the object of asking for the enlarged authority was frankly explained ; and, upon this explanation the Legislature passed the act of the last session, permitting the bonds to be sold upon such terms as the Board might think proper to accept.

After the passing of this act, the Board,—not doubting that an amount of the bonds sufficient for their immediate purposes could be sold before the end of the year,—in the month of January, 1846, directed thirty miles of the new track to be put under contract, and, for the monthly payments, used the revenue. If the expectations of the Board had been realized and the bonds had been sold and the loan consummated in the ordinary way, there would not have been enough even of novelty in the transaction to have provoked objection from any quarter. I do not doubt that upon a further examination of the subject, the scheme finally adopted will be found to be neither more nor less than a *loan*, consummated, it may be admitted, in a different mode, but consummated in strict conformity with the *charter* ; in furtherance of the publicly avowed objects of the Board, and upon terms more advantageous to the interests of the stockholders, than it would have been possible, under the circumstances, to have accomplished it in the usual way.

Recurring again to the annual report it will be perceived that the net earnings of the company during the year over and above the current expenses, including the ordinary repairs of rail way and machinery, amounted to the sum of \$440,475  $\frac{184}{100}$  being more than six per cent. upon the capital ; and *these*, it may be

observed, constituted the actual, net "conjectural" profits of the year. The portion of these profits borrowed from the revenue on account of the coal trade, and for the purpose of reconstructing the road in anticipation of the sale of the bonds, amounted to \$146,-816  $\frac{1}{2}\%$  which with the other appropriations already stated, reduced the amount of profits unexpended to the sum of \$90,-540  $\frac{1}{2}\%$  being,—after providing for the sinking fund,—about one per cent. on the capital. So that it will appear that, by replacing the former amount by loan, according to the avowed intention of the Board, the net profits in hand would have been \$237,356  $\frac{1}{2}\%$ , which, after making the usual appropriation to the sinking fund, would fully authorize a dividend of three per cent.

I submit to you, sir, if it be possible to question either the authority or expediency of replacing both the above sums by *loan*, in any mode in which, with the consent of the borrower and lender, it could be consummated? The fundamental objects of the incorporation of such a company as this can be nothing less than the *construction* and *repair* of their road, and of the power, machinery and stations that may be necessary to preserve it in effective operation, during the existence of the charter. Although, in common parlance, the same description of work may be intelligibly designated by different terms, and those of *renovation* or *reconstruction* be indiscriminately employed to distinguish that which might appear to be somewhat different either from construction or ordinary repairs; it would be difficult to imagine any description of work whatever, either in the original making of the road, or in its subsequent preservation, that would not be comprehended by the terms *construction* and *repair*. I have always supposed that professionally the term *construction* comprehended the whole cost of making the rail-way, of stocking it with moving power, machinery and stations of every kind, and also any new appurtenances of the same description, that might from time to time be needed; and that everything necessary, subsequently to preserve the whole in good order was comprehended under the denomination of *repair*. In England certainly, and in all the estimates of original cost of the multiplied rail-ways in that country, and in the numerous professional treatises to which these extraordinary improvements have given rise, the distinction I have stated is uniformly recognized.

Accordingly, it may be presumed in conformity with this distinction, by the 14th section of the charter,—which there is abundant proof, was prepared by no careless hand,—it is declared "that, the President and Directors of the company shall be and are hereby invested with all the rights and powers necessary to the *construction and repair* of a rail road from the city of Baltimore, to some suitable point on the Ohio river."

The second section provides "that the capital stock of the Baltimore and Ohio Rail Road Company shall be *three millions of dollars*, in shares of one hundred dollars each." The mind that dictated the charter, however, could not be deluded by the belief

that the objects of the incorporation could be accomplished with such means, and it did not leave its work incomplete. By the 13th section, therefore, it is enacted "that, if the capital stock of said company shall be deemed insufficient for the *purposes of this act*, it shall and may be lawful for the President and Directors of the company, or a majority of them, from *time to time* to increase the said capital stock, by the addition of as many shares as they may deem necessary;"—with no other restriction than that the shares "shall not be sold under their par value." The same section also expressly enacts, "that the President and Directors, or a majority of them, shall have power to borrow money *for the objects of the act*, to issue certificates or other evidence of such loans, and to pledge the property of the company for the payment of the same and its interest." It is plain, therefore, that according to these clear and comprehensive provisions, the Board were fully authorised to repay to their stockholders such amount as they had taken from the annual receipts for the purposes already explained,—either by making an addition to the capital, and delivering the shares necessary for that purpose to the stockholders if they chose to accept them; or by raising the same amount by loan! A preference of either would necessarily depend upon the sound discretion of the Board; and if a resort to loans be preferred, I am yet to discover any thing in the words or spirit of the charter, or in the nature of the case, that would render a loan from a stockholder or from the body of the stockholders, less expedient or justifiable than if obtained from any other quarter. In the present instance, as I hope will satisfactorily appear, the preference given to a loan was on every ground the most expedient; and that the mode of borrowing from the stockholders, rather than by an indiscriminate sale of the bonds, was not less advantageous to their interests, may be presumed from their ready co-operation in the measure.

The proceeding is far from being without warrant, in other respects, and from analogous acts of the Board, heretofore sanctioned by the State. According to the interpretation they have received by the company's counsel, similar powers of adding to the capital or of borrowing money for such purposes as have been heretofore explained are conferred by the laws authorising the construction of the Washington road. For sometime after the completion of that road the repairs were very heavy, far greater than are usually incident to a new work, and the profits of the road were applied in making them. The cause of such extraordinary repairs was to be found in the character of the country and the nature of the soil. The earth continued for years to fall in from the sides of the deep cuts, requiring to be constantly removed at great expense; and in 1838 when it was supposed the cuts had assumed the slope at which it was thought they could stand, the Board requested the opinion of their counsel as to their authority to return to the stockholders the revenue which had been from time to time taken for those purposes. I believe I may

assure you that the Board are not in the habit of taking any important measure, involving a construction of their charter, without the precaution of seeking the best advice at their command. On that occasion, the counsel stated it as his opinion that "*the stockholders had a right to an equivalent of these expenses in dividends* ; and the question was as to the manner in which the stockholders should be paid. He thought two modes presented themselves. The first was to borrow the money and pay it to the stockholders thereby creating a debt to be gradually extinguished,—the other was to create an amount of stock equal to the expenses above mentioned and give it to the stockholders in lieu of money—*which was in fact a borrowing from the stockholders, giving them stock instead of bonds for their loan* ; and he entertained no doubt whatever as to the company's right to pursue either mode." He thought "the road defectively constructed at first had been re-constructed in fact, and the charge was not one which it was right to put immediately upon the revenue." In the state of the company's credit at that time, and considering the increasing value of the Washington road, the Board determined to return to the stockholders in shares of *stock*, the money that had been taken from the profits. They accordingly increased the capital 10 per cent., issued certificates of new stock to that amount, and delivered them to the stockholders at par, in lieu of their cash dividends! Although that proceeding was in fact, and so treated in the opinion of the company's counsel, only borrowing from the stockholders, giving them *stock* instead of bonds, neither the authority of the company nor the expediency of exercising it was questioned. Its novelty, even, occasioned no surprise ; and by the able gentleman who, at that time, and for many years before, and subsequently, presided over the finances of the State with integrity and courteousness, only surpassed by his acknowledged ability, the new shares were accepted, and, added to the number previously owned by the State, have ever since constituted part of the capital on which she has received all subsequent dividends. Then, on the recent occasion, in point of law the authority and option of the company were the same ; and if the Board had proceeded to return the profits to the stockholders by shares of *stock* instead of *bonds*, the verisimilitude of the two cases would have been perfect ; and in that case, the former having been recognised by the authorities of the State, there could have been no pretence, so far as the legality of the proceeding was concerned, to complain of the last. In returning in a dividend the profits that had been applied to the coal trade, and to the re-construction, however, the Board did not consider that a return of the profits in shares of *stock*, would, under the circumstances, be just to the stockholders. In the former case, the stock of the *Washington* road was, in fact of greater value than the bonds of the company ; but at the time of the last dividend, the bonds were supposed to be of not less value than 96 dollars in the hundred, while the value of

shares of stock was in fact less than fifty in the hundred ; so that by proposing to pay in *bonds* rather than stock, the Board offered to the stockholders an advantage equal to that difference! I hope, sir, you will bear in mind that, according to the opinion of the company's counsel, and I may add, from the nature of the case, either mode was merely borrowing from the stockholders the amount of profits which had been earned with their capital ; and that the only difference between them consisted in paying them, in the one case in shares of stock worth fifty cents, and in the other in bonds worth not less than ninety-six cents in the dollar! Then sir, if it appear, as I think it plainly must, that the recent dividend was not declared of "*conjectural profits*,"—a charge which of any that could be made I hope is destined to receive the least countenance from any intelligent mind,—and if it further appear that the mode in which it was proposed to be paid, so far as it was payable in *bonds* and not in *money*, is to all intents and purposes a *loan* effected by borrowing from the stockholders, instead of an indiscriminate sale of the bonds, for which the laws afford the amplest authority ; it need not only not be denied, but on the contrary must be admitted by all that the assent of the stockholders becomes an indispensable element of its success. Indeed, both the Governor and the Treasurer appear to have taken this view of it. I confess to you, sir, that in my earliest examination of the subject, that feature appeared to me to be among its chief recommendations. I thought the Board would render a grateful service to their stockholders by placing at their option, and dependent upon their free consent, the means of immediately receiving the profits of their capital earned during the year, in bonds which they might dispose of according to their own pleasure ; or, preferring a continued application of the annual revenue to the work of reconstruction, rather than incur the sacrifice which might attend a general and indiscriminate sale of bonds, they might by their conduct indicate that preference. It must be apparent to you, sir, that a general sale of bonds, under the urgent necessities of the company, to an amount needed for the reconstruction, might involve a much larger sacrifice, and produce far greater loss to the company and the stockholders, than a continued application of the annual revenue to that purpose. And in this connection it must be considered that unless desired by their stockholders, and it could be done in a manner acceptable to them and warranted by the charter, the Board were under no legal obligations,—though I think an appeal to their equity possessed great force,—to return these profits by any immediate proceeding whatever. It was a question as to the time and rates at which the Board would proceed by borrowing upon a sale of their bonds, to replace the amount taken from the revenue. By any mode which would induce the stockholders to become the lenders, a loan would be effected ; and the proceeds as properly applied to the objects already explained, as if they had been obtained from any other disposition of the bonds. In the decision of this question therefore

the Board thought the condition and necessities of their stockholders should be allowed their just weight. And in this view I desire to ask your attention to the condition in which the Board were placed when they determined to submit the proposed mode of payment to their stockholders, and also to the advantages they hoped to confer upon them by the operation.

It has already appeared to you, in the course of this letter, that after using so much of the annual profits for the purposes already stated there remained at the control of the Board an amount which after the ordinary appropriation to the "Sinking fund," would not have authorized a cash dividend of more than one per cent. This amount I cannot doubt, all will consider as having been actually earned, and that therefore, at least the part of the recent dividend payable in money is of *real* and not "*conjectural*" profits. I do not propose to enquire why to this extent the dividend might not have been accepted by the Treasurer; since for this purpose it is not here alluded to. It is brought into view in order that the operation of the dividend, both with the money and bond feature, upon the interest of the State as a Stockholder may be clearly seen; and I desire it to be remarked, that if of this sum on hand, a dividend of one per cent. had been declared, and paid to all the Stockholders in proportion to the number of their shares, in money, the *State of Maryland* would have received *in cash* \$5000, *and no more*; and that sum would have constituted the total of her receipts from the *Main Stem* of the road, for the past year. Now, sir, I have no desire to conceal from you and the committee, my opinion that, if the Board had consulted only its own ease or that of all upon whom the active financial duties of the Company are devolved, have treated the cash actually unexpended as all that remained for distribution, and limited their dividend to *one per cent.* In the posture in which they were placed, however, they thought they were scarcely at liberty to take so narrow a view of their duty.

Their option was to use their revenue for the reconstruction of the road, to wait their own time for the sale of these bonds and make no dividend till one or both could be accomplished, or to devise another form a loan which might be mutually satisfactory to their Stockholders. They pursued the last course.

The Board had reason, officially, to know that this city, owning a full moiety of the whole stock of the Company, while liberally contributing, in various modes, to the revenues of the State, was under an obligation of annually providing large means to maintain her own hitherto unsullied credit; and that the payment in money, or its equivalent of the profits earned by this Company, was if not indispensable, of the utmost importance to her financial resources. The Board knew moreover, that to a large portion of the individual Stockholders, a payment in bonds, either as a means of safe investment or as a medium easily convertible into money, would be scarcely less acceptable than cash; and they did not doubt that in thus creating so large an interest—

in those having already a deep stake in the enterprise,—to sustain the value of the bonds, they would give a new support to the credit of the Company.

I hope, sir, I may be allowed to say that, in reflecting upon their course, it was impossible they should overlook the fact that the bonds of this Company being of greater value than those of the *State*, it would be in the power of the Treasurer by a judicious exchange of one for the other, in any mode that might be preferred for that purpose, to place the State upon a much better footing than any other Stockholder. The Board, however, could only propose, without attempting to enforce this advantage. It was placed at the free option of the Treasurer to use or neglect it according to his pleasure. If from the view he should take of the subject he preferred a dividend of one per cent. in cash to such a dividend with ten thousand dollars in bonds superadded; and continue to reject both rather than accept the addition, however the Board might differ from him in opinion, they could have no ground for censure or complaint. Their duty will be performed when they have shown a sufficient warrant for their proceeding; and that, in adopting it, they looked as steadily and anxiously at the interests of the State, as they could do to that of any other Stockholder.

Whatever may be its value, sir, such was the reasoning by which the Board were led to propose to the acceptance of their stockholders the mode thus devised for the payment of the dividend: and they have abundant reason to congratulate themselves upon the almost universal approbation with which it has been received and sustained, not only by their stockholders but by the public at large.

In the first place, sir, at the annual meeting of the stockholders, at which the report proposing the scheme was submitted,—and at which it was competent to the State to have been fully represented,—the report, with the recommendations of the Board, was unanimously approved and adopted; and, of the seven millions of dollars constituting the present capital, the stockholders, amounting to six millions five hundred thousand dollars, have cheerfully accepted their proportion of the bonds, and thus emphatically testified their approbation of the expedient proposed by the Board. I hope I may be permitted to add that the stockholders who have thus sanctioned a measure not only for its intrinsic merit, but for its tendency to sustain the credit of the company, and assist the Board in the future prosecution of the enterprise, compose that great number whose investment in the stock of the company has not hitherto yielded a revenue equal to more than two per cent. upon the par of the capital.

The State of Maryland, acting so far through the agency of the Treasurer, is the only stockholder by whom any opposition to the mode of payment proposed by the Board, has been manifested; and I hope I may add that from such quarter, least of all, could any opposition have been anticipated.



It is acknowledged by the Governor that the State, in one form or other, has received the full interest upon her investment in this company, and "that of all the other companies chartered by the State, and in which she has invested so many millions of her capital, this is now the only one from which she can hope to realize the advantages which induced her original investments in all of them." And while the Board, under all the disadvantages of an unfinished work, have regularly paid their annual tribute to the public treasury, the Governor further acknowledges, with a truth and force that must have their full weight with all reflecting minds, "that the paralyzing effect of the State's delinquencies upon the credit, energies and prosperity of every class and every interest, could not be more forcibly illustrated than by its effects upon this company."

Nor must it not be overlooked that the actual receipts of the State from her interests in the works of this company during the past year, if the cash dividend of one per cent. be included, would amount to not less than seven and three-quarters per cent. upon her entire investment. It is also to be stated that by accepting the dividend in the form proposed by the Board, and promptly effecting an exchange of the bonds for State bonds at the usual market rate, the dividend to the State upon her capital in the Main Stem would not have been less than three and three-quarters per cent., while by the other stockholders it may be somewhat uncertain whether three per cent. could be realized.

Then, sir, it may be seen that if the Treasurer, imitating the example of one of his most distinguished predecessors, had accepted the sum of ten thousand dollars in the company's six per cent. bonds; and, obtaining authority for that purpose, had, in any way, exchanged the bonds for those of the State, the amount of interest which might have been received by the State from her investment in this company, would have been rendered equal to nine per cent. upon her whole investment. I hope I may be allowed to remark that by such a course the Treasurer would have effected a more advantageous operation than may be expected from the exchange of the bonds of the Tide Water Canal Company for those of the State, which the Governor has deemed it expedient to recommend.

I desire further to acquaint you, sir, that the mode of paying in bonds, thus proposed to the option of their stockholders, is a clear addition to any thing that they could have received independent of it; and that in no event could the State, by accepting it, be in a worse condition than if no such scheme had been devised. You will find that, however the equity of the case might be determined, of which, I confess, I should feel no apprehension, the Board did not attempt and did not in fact give any advantage to the class of small stockholders over the State. You have seen that, without borrowing by the issue of bonds, a dividend of only *one per cent. in cash*, payable to all the stockholders in their proper proportion, could have been declared; and that, in such event, the State's share would have amounted to precisely *five thousand*

*dollars.* You will further discover that according to the mode, actually adopted by the Board, of paying to all stockholders owning less than fifty shares three per cent. in cash, and to all owning fifty shares and over one per cent. in cash and two per cent. in bonds, the State becomes entitled to receive *five thousand dollars in cash*, a sum equal to that which she would have received from a dividend payable wholly in cash and to all stockholders alike. It would then clearly appear that, by this scheme of payment, no preference whatever, detrimental to the interest of the State, has been created.

Indeed, sir, in determining to pay the full amount of the dividend in cash to those holding less than fifty shares, the Board acted from no wish, and from no belief, that they would thereby contribute, to give a preference to any class of the stockholders. They desired and intended on the contrary, while avoiding unnecessary prejudice to any, and more especially to the State, to conform their certificates to the general laws regulating the paper currency, and to prevent any injurious effect upon the credit of the public securities or those of the company. They felt it to be their imperative duty, if they issued bonds either to the stockholders, or for the purpose of general sale, to keep them of such denominations as would prevent them from degenerating into the character of small notes; and they, therefore, determined to issue no bond of a less denomination than one hundred dollars. Now to make a dividend of three per cent. including the net profits actually in hand, equal to one per cent. and to issue bonds for the excess, it will be perceived that, in order to prevent the issue of bonds of a lower denomination than one hundred dollars, and to give the State the same amount in cash as she would have received under a general money dividend, the precise discrimination adopted by the Board was absolutely necessary. By no other contrivance, as the Stock Ledger will shew, and as you may readily imagine, could it have been possible to avoid an issue of bonds of a denomination as low as two dollars. Then, sir, if by this discrimination the State was deprived of no part of that, which, from a cash dividend payable to all the stockholders alike, she would have been entitled to receive, and if, by its adoption, the general policy by which the State has wisely regulated paper issues has been scrupulously maintained, and the credit both of the State and the company in the future sale of bonds has been prudently guarded from depreciation, it might not unreasonably be expected that for this part of their scheme the Board would have been rewarded with approbation, rather than rebuke.

It may be hoped, sir, that the foregoing observations will satisfy all candid minds not only that the Board have not declared a dividend of "conjectural profits," but that, in all their proceedings upon the subject, they have proposed to divide nothing but that they had actually earned; and that they have acted with the full warrant and sanction of the law. That they declared the dividend, and devised the proposed mode of payment with no object

to acquire any peculiar advantage, or even facility in their own administration of their duties that they might not have ensured without it, must be entirely manifest; that their own convenience and the vigour of their future operations might have been better promoted by a cash dividend of one per cent. only, or by abstaining from any dividend whatever, is not less apparent; and, when urged by the necessities of a moiety of the stock to divide the receipts actually earned by the employment of its capital, either in cash or in some other form equivalent to cash, that they devised a scheme for that purpose, working no injurious partiality to any, and productive of great advantage to all, is abundantly testified by the almost unanimous assent and co-operation of their stockholders.

It becomes no more than proper to remark that the Board have lost none of their confidence in the lawfulness, or expediency, or wisdom of the plan which, in the posture in which they were placed, they deemed it their duty to propose. The effect of the measure upon the credit of the company disappointed none of their expectations; and the price at which, until the appearance of the Message, and the Treasurer's Report, the bonds were selling, is a conclusive proof that the scheme in all its parts conferred substantial benefit upon the great body of the stockholders.

That the proposed mode of paying the dividend should, upon the first impression, and in the estimation of some, wear the aspect of novelty, is not the fault of the Board, nor, I apprehend, of the scheme itself; and, I respectfully submit, is not a sufficient reason, why, without an investigation into its real character and merits, it should be condemned. In the multitude of expedients to which this complex branch of political economy is perpetually giving rise, those of the wisest conception, and the most beneficial in their results are very apt to be new; and if every thing that appears to be novel should for that reason be discountenanced, much that is of unquestionable merit might be forever lost.

I need scarcely tell you, sir, that the scheme of a "Sinking Fund" itself—now so highly prized by those to whose management the finances of the State are confided,—and which, if it could be constituted with the necessary provisions and guarantees for the payment of the interest and redemption of the principal of the public debt, might be admitted to be of considerable value,—struggled for nearly fifty years from serious discouragements on account of its novelty. I by no means presume, however, sir, to assimilate the importance of the scheme proposed by the Board to that of a judiciously regulated "Sinking Fund;" although its history may not be inapt to illustrate the opinion I entertain, that the best financial contrivances, in their inception, may well be, and not unfrequently are both complex and novel.

I might indeed have altogether spared you these observations, in an exposition already too much extended, since I am under the firm persuasion that the mode of payment, to which exception has been taken, is entitled to much less merit on the score of novelty

than might at first be supposed. The proceedings by the Board in the instance of the Washington road, already examined, are sufficiently analogous in principle, and in form, to the measure recently adopted by the Board, to strip it of the character of novelty. But if I have not wholly misapprehended the real attributes of the most critical and important expedient rendered necessary by the urgency of our public finances,—that of paying to the shareholders of the State the fruits of their capital, in new bonds of the State—it does precisely square in principle, and even in outward form with the mode proposed by this Board, of paying to their stockholders two per cent. of the net earnings of the road!

In some points however, sir, the analogy between the two expedients would appear not to be so perfect. In the first place, the public creditor having no other concern in the employment of the capital advanced by him than to receive the legal rate of its interest, might not be expected to be so patient at disappointment, or be willing to accept any thing short of a full equivalent; whereas the stockholders of the company might not improbably derive great advantage from the employment of their capital, though its net earnings might be used otherwise than for dividends. In the next place, it will be apparent to you, that the arrears of indebtedness for which it is proposed the State shall issue bonds, have never in fact been earned or received by the State, in any form whatever; and that however justly due to the creditor as the only legitimate fruit of his capital, the amount of bonds, whatever it may be, must be a clear addition to the present obligations of the State for which she has received and can receive no equivalent whatever.

On the other hand, the amount for which the Board propose to issue their bonds has actually been earned, and legitimately and usefully expended on account and for the purposes of their stockholders; so that, besides the bonds proposed to be given in payment, both the Board and the stockholders have an additional advantage, if not a full equivalent, in the cheaper working of the road, in the improvement of its general operations, and in the great augmentation of the future revenue, which may certainly be expected from a temporary application of the profits to those purposes.

If it should be the pleasure of the State to be content with paying the arrears due to its stockholders in new bonds at a reduced interest, instead of six per cent.,—the rate at which this company has issued its bonds—then, in that respect also, the analogy to which I have referred would be incomplete. Nevertheless, sir, there would appear to be analogy enough between the cases to remove any suspicion of novelty from the mode proposed by the Board. Indeed, I do not doubt that, upon the examination I have invited into its character and effect, you will readily recognise in its form and substance an old acquaintance, perhaps somewhat differently situated, but in strict conformity with principles which, both in theory and practice, have been familiar for centuries.

Allow me to say in conclusion, that although I have been more

intent in removing from the proceedings of the Board any suspicion of improper conduct in their recent dividend, or of any violation or disrespect of the authority of the Law,—because I deem it of greater importance than any thing else that their conduct should be free from all such suspicion,—I have nevertheless endeavoured to show that in uniting with the other stockholders in receiving payment of the dividend in the manner proposed, the State would not only subserve her true interests, but really “render assistance to the Company in the prosecution of its designs.”

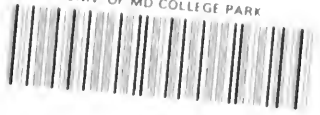
I must ask you to pardon the length to which I have felt it incumbent to extend these observations ; and have the honor to be, sir, with the highest consideration,

Your obedient servant,

LOUIS McLANE, President.



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